


COMMISSIONERS APPROVAL

CHILCOTT 

THOMPSON 

LYONS 

PLETTENBERG (Clerk & Recorder)

Date.....February 22, 2007

Members Present.....Commissioner Greg Chilcott,  
Commissioner Alan Thompson and Commissioner Howard Lyons

Minutes: Glenda Wiles

The Board participated in a Planning and Zoning Commission public hearing on the  
Yerian-Mihara Voluntary Zoning District Standards.

Planning and Zoning Commission Members Joanne Johnson, Paul Snyder, Commissioner  
Greg Chilcott, Commissioner Alan Thompson and Commissioner Howard Lyons were  
present as was Planning Director Karen Hughes, Case Planner Jennifer DeGroot, and  
Civil Counsel Alex Beal.

The Board reviewed the Planning and Zoning Commission minutes of January 9<sup>th</sup>. It was  
noted the minutes need to be changed to reflect Paul's correct name. Commissioner  
Chilcott made a motion to approve of the Planning and Zoning Commission minutes of  
January 9<sup>th</sup> with corrections. Commissioner Thompson seconded the motion and all  
voted "aye".

Staff report: Case Planner Jennifer DeGroot presented a staff report as attached.

Public Comment was then called for.

James Shatney read a statement to represent both he and his wife Irene. (See attached).

John Nevil stated while this might have been handled legally, it was not handled morally.  
There were no neighborhood meetings to discuss these standards. They were simply  
asked to give money to move the process forward. In regard to Yerian Lane; the west  
side neighbors were not included. It looks like he and his neighbors have restrictions on  
their property, but the four residents across the street do not have any restrictions. Some  
of the people who signed the petition have never lived in Montana and do not intend to  
live here as they are out of state residents who simply own property within these  
proposed district boundaries. John also stated he does not think it is right to have the  
State of Montana tell him who he can have stay in his home either.

Lynn James stated she opposes this zoning. She was never allowed to participate in the conversations. She is one of two of the largest land owners at 19.55 acres. She has lived there longer than those who signed the petition. She stated she does not want someone else to tell her what to do on her land. She stated this is not voluntary zoning, and there is already an interim zoning in place ('one for two'). If this district passes, then she considers this to be 'overlapping zoning'. She expects change and people to come to the valley but she does not appreciate it when they move here and then begin to dictate what they want her to do on her land.

Ronnie Freeman stated she is not in the real estate business and she moved here from the east. She did not know what an irrigation ditch was when she bought her property and felt like she did not know a lot about rural living. Her neighbor (Lynn James) wanted her to sign a petition that would allow Lynn to give 10 acres of her property to her child. Ronnie stated she wanted to be a good neighbor and it seemed like a good idea. But since that time her home has been ruined. Ronnie is the largest land owner and lives next to Lynn. She has tried to be a good neighbor, but felt she needed to protect her investment as she spent \$600,000 to have a 'piece of Montana'. When she was told to sign the paper, she was told she and one other person would be affected. Ronnie stated she was lied to. She thought when she signed the paper it would restore everything the way it was.

John Horwich stated he is a proponent of the zoning but does not live in the district, as he is moving out of state. He feels strongly for the district, and what Ronnie has expressed is true, as they simply wanted to take the property into one 'look' rather than three separate areas with different covenants. He stated the majority of the residents wanted to maintain the character of the neighborhood and voluntary zoning seemed to be the way to go. They have changed the limit of how long a guest can stay. The provisions now allow a guest house subject to the rules of the county and any existing covenants. They want to establish a minimum lot size and be subject to minimum set backs with residential and agricultural use. He stated there should be no confusion on the multiplicity of zoning; as their rules are actually more restrictive. He felt the current proposal, as amended by the staff, has responded to the concerns of the neighbors.

Earl Phillips stated many of the representatives are not here because they live out of state. But he is a property owner and he simply wanted things to remain the same – to have the same character. The Voluntary Zoning District was a tool they could use to keep the size and character of the lots.

James Shatney asked if someone could respond to his statement.

Public Comment was then closed. Board deliberation took place. Karen stated this meeting is to determine the development standards. The findings the Commission needs to make are listed in the staff report, which include public health and safety, growth policy compliance, establishment of a developmental pattern for the physical and economic development of the district.

John Horwich addressed James Shatney's question by stating in regard to the inconsistencies within the zoning area boundaries; the 5 acres of the 15 that is owned by Joe is a separate legal parcel. He stated he does not know if they had the same covenants. In regards to the Mitchell property; they saw this as a bordering property and were thus left out.

Karen stated these questions are a 'little off base' because it is not an issue that is to be addressed today. Commissioner Chilcott stated he understands the difference between the two separate parcels. James stated they are contiguous properties; having no border and accessing off of the same road.

Earl stated it appears that some properties look like they were purposely left off. The properties on the west side of Yerian have the same covenants as their residents have on the east side. He felt they were selectively excluded.

Paul stated there would always be people left out or included. He stated the district boundaries have already been decided. He stated it is important for the Commissioners to know this information.

Commissioner Chilcott asked Ronnie if she opposed or supported this. Ronnie stated she supports the zoning, as she wants the open space. She stated when she signed the paper to allow the neighbor's daughter to live there; she thought that would help her neighbor but that upset everyone. That is why she moved forward with this zoning and is trying to put things back the way they were.

Paul asked if the residents knew they were in the district boundaries. Earl stated they did not know. Karen stated they exceeded the statutes legal notification to the residents. Commissioner Lyons asked if the boundaries were formed without all residents knowing about it. Earl stated that is correct. He stated they were asked to put money forward and sign the petition. When he stated he would not sign it, he was told 'they did not need his signature because they had enough anyway'.

Commissioner Chilcott asked Earl if he would support this with the new occupancy standard, and if neighbors to the west were included. Earl stated if that was the case, he would support it 100%.

Commissioner Thompson stated a boundary line needs to be set. Earl stated it appears to him that the people who established this boundary live on the eastern edge and they don't care what happens to the west of them, because they can't see it from their front yard. However, his place views the west side neighbors. Commissioner Chilcott stated those neighbors have the same covenants, so that should address some of those concerns.

Commissioner Thompson asked if the petition meets the requirements of the statutes. Karen stated the petition requires 60% of the residents to sign. That threshold was met

and a 30-day protest period was held. Therefore the boundaries were set because they received no protests.

Earl stated they did not have any information on the boundaries and thus did not participate in any 30-day protest period.

Commissioner Thompson reviewed the original petition finding no protests. He asked if there were any other legal requirements that have or have not been met. Karen stated the next phase is the district standards which is what they are doing today. Commissioner Thompson asked about the guest home provision. Karen stated the previous provision talked about temporary housing of guests and that is hard to enforce. Guest homes are now permitted, and the allowance of having a guest stay a number of months was changed. She stated that would be difficult to enforce. Commissioner Thompson stated he does not want the county to involve them in any enforcement of counting the days that a guest is there.

Commissioner Lyons asked about guest homes. Karen stated under state law, any additional units would need review under the 'lease or rent subdivision' request.

Commissioner Chilcott asked if guest house is defined and could it become a rental? Karen stated it simply allows a second dwelling.

Earl stated there are two houses in his neighborhood that have rental units even though the covenants prohibit it.

Commissioner Thompson stated that area has changed tremendously since he lived there twenty five years ago.

Commissioner Chilcott asked what Ronnie had signed. John stated there are three sets of covenants that control the properties. The covenants allowed the covenants to be changed if signed by a majority of land owners. Ms. James asked to have Ronnie's covenants changed and that amendment prohibited further subdivision of lots. The paper Ronnie signed removed that prohibition. The other two property owners never knew it happened as Ronnie and Lynn James held the majority of the property. That change was the impetus for the zoning district. The amendment that was signed released the covenants on those 60 acres. Since that time, Ronnie has reinstated the covenant provision as the other neighbors wanted them back. John stated when neighbors rely on covenants; they see the fragile nature of the land use.

In regards to setbacks, Lynn James stated she does not want the 25' set back. John stated other covenants have 75' and they would be more restrictive. As a matter of working with people, they tried to pick the lowest setback. Most agreed they would have no problem with 75', but many of the 75' set backs have already been violated.

Paul asked if any one had a problem with the 6' sign. No one spoke in opposition, as long as it does not create a traffic problem. Paul asked if there is a process to remove this

district. Karen stated the boundaries can be amended by way of petition. He stated no one has ever found a way to remove a voluntary zoning district altogether.

Commissioner Chilcott stated there needs to be some definition of what a guest house is. Karen stated the way it is currently written is 'any second dwelling'. Commissioner Chilcott stated the residents have a concern over the non conforming use of a rental use. Earl stated they are not interested in building a guest house. Commissioner Chilcott stated he is focusing on a second dwelling and it needs a definition.

Paul noted the homeowners enforce the covenants and the county enforces the setbacks. He suggested they establish the setbacks at 75' so the county would be the enforcer. Karen asked if that would be a problem with the neighbors. The residents stated no as long as those houses already built would be grandfathered in. Commissioner Thompson stated 75' is quite a distance. Lynn stated when you have 10 acres 75' is not a problem. Commissioner Chilcott asked if all non conforming uses will be grandfathered in. Karen stated if a nonconforming house burned down and was not replaced within a year; the reconstruction would need to meet the use and could not be non-conforming as it was before the fire. The Commission agreed to change the set backs to 75'.

James asked about the second dwelling becoming a rental when it was first built for a 'mother in law' residence. Karen stated the way it is written simply allows for a second dwelling.

Paul asked who wrote the standards. Karen stated they were presented by John Horwich.

Commissioner Chilcott asked John when the guest house provision was drafted, did he draft them based on the majority of the existing covenants. John stated they were generally prohibited by covenants. Lynn asked how they could change the standards when 68% of the residents are not there. Karen stated the 68% is only for the creation of the district boundaries, not for the district standards and the Commission makes the recommendation to the Commissioners.

Commissioner Chilcott stated they would have to amend the covenants in order to build the second dwelling. Therefore, even with that provision in the district standards the covenants would need to be changed to allow it. And they could not change them to be 'less restrictive'. Therefore there is already protection on that issue. Most of the residents present stated they did not believe their covenants allow for a second dwelling. Lynn James stated she is not willing to take away some future home owners rights. She stated people live longer and someone may need to take care of a parent at some time. James stated the covenants do not allow a second dwelling and they knew that when they bought the property.

Commissioner Lyons stated they are 'beating a dead horse' as there is not enough agreement from the residents on these issues. He felt this should go back to the

neighbors for further discussion before the Planning and Zoning Commission makes any decisions.

Earl stated this whole zoning issue occurred because of a dispute between Ms. James and Ronnie. The neighborhood had three different groups of covenants and they were happy.

Lynn suggested they use Hamilton Heights on the north side and Yerian on the west side, as right now the district boundary is zigzagged. Paul stated the boundaries have already been established.

Karen stated the Commission can ask the staff to come back with a different proposal if they like.

Commissioner Lyons made a motion to continue this at a later date so the standards are 'clear cut'. Karen asked if the Commission wants the residents to come back with something. Commissioner Lyons stated yes. Paul stated his concern is that the majority will end up coming back because not everyone will agree. Commissioner Lyons stated the homeowners need to come to that agreement as it is not his place to do that. He also stated everyone should agree, and not just the majority. He reiterated his motion that 100% of all property owners come to an agreement on then bring the standards back for the Commission's approval. This motion died for a lack of a second.

Commissioner Chilcott stated he does not want to 'drag this out'. He sees a strong concurrence on the 75' set back and the second dwelling language can stay because the home owners have control over that through the covenants. This will allow for future landowners if they see fit to change the covenants allowing a second dwelling to go through subdivision review.

Commissioner Chilcott made a motion to adopt the district standards with the findings and amendments of a 75' setback, leaving second dwelling provision. Commissioner Thompson seconded the motion. Discussion of the motion then took place. Commissioner Thompson stated there is always someone who disagrees with the standards. Commissioner Lyons stated he is still not in favor of moving forward as all the land owners were not aware of the boundaries when this district started. He stated they have simply agreed to live with the standards and they will go home with a 'sour taste in their mouth'. Commissioner Chilcott stated the Commissioners can address the statute requirements for notification of the homeowners, but noted that today the county is compliant with the law. Karen stated the staff did not present the standards, as they were part of the petition. All members of the Planning and Zoning Commission voted "aye: with the exception of Commissioner Lyons who voted "nay". Motion carried. (See Planning and Zoning Commission Resolution No. 07-02).

In other business the Board met for a Request for Commission Action on Sunnyside Orchards #3, Block 10, Lot 1-A AP. Minutes of that meeting are as follows:

**Ravalli County Board of County Commissioners (BCC)**  
**Minutes for 10:00 a.m. Meeting on February 22, 2007**  
**Commissioners Meeting Room, 215 S. 4<sup>th</sup> Street, Hamilton, Montana**

**1. Call to order**

**Commissioner Chilcott** called the meeting to order at 10:40 a.m.

**2. BCC and Staff**

**(A) BCC**

Greg Chilcott (Present)  
Alan Thompson (Present)  
Howard Lyons (Present)

**(B) Staff**

Tristan Riddell  
Renee Van Hoven

**3. Public Meeting**

**(A) Sunnyside Orchards #3, Block 10, Lot 24, AP (Greer) Minor Subdivision**

**(i) Board action on the Subdivision Proposal**

**(a) Board Decision**

Commissioner Thompson made a motion to **approve** the Sunnyside Orchards #3, Block 10, Lot 24, AP minor subdivision, based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report, as amended by the Planning Department and to include language stating that the applicant may request a variance through the Board of Adjustment prior to final plat approval.

Commissioner Lyons seconded the motion and the Commissioners voted 3-0 to **approve** the subdivision.

In other business Commissioner Chilcott attended a BREDD Land-use subcommittee meeting in Missoula during the afternoon hours.

The Board made a site visit to the Gill Expedited Subdivision during the afternoon hours.

**PUBLIC HEARING OF THE RAVALLI COUNTY PLANNING AND ZONING COMMISSION  
REGARDING YERIAN-MIHARA VOLUNTARY ZONING DISTRICT STANDARDS**

**FEBRUARY 22, 2007 AT 9:00 A.M.**

**RAVALLI COUNTY ADMINISTRATIVE SERVICES CENTER  
215 SOUTH FOURTH STREET  
HAMILTON, MONTANA 59840**

1. Call to Order and Pledge of Allegiance
2. Review and approve minutes from January 9, 2007
3. Public Hearing: Yerian-Mihara Voluntary Zoning District Standards
  - a. Staff Report
  - b. Public Comment
  - c. Discussion and Deliberation of the Planning & Zoning Commission
  - d. Action
    - i. Adopt the Resolution to put into Place District Standards for the Yerian-Mihara Voluntary Zoning District
    - ii. Adopt the Resolution to put into Place District Standards for the Yerian-Mihara Voluntary Zoning District with Specified Revisions
    - iii. Recommend Revisions to be Prepared by Staff and Considered at a Continuation of the Hearing
    - iv. Postpone Action
4. Close: Public Hearing (or continue the hearing to another date, time and location)



**YERIAN-MIHARA  
VOLUNTARY ZONING DISTRICT**

**STAFF REPORT FOR PLANNING & ZONING COMMISSION**

**CASE PLANNER:** Jennifer De Groot *JD*

**REVIEWED/  
APPROVED BY:** Karen Hughes *KH*

**PUBLIC HEARINGS/  
MEETINGS:**

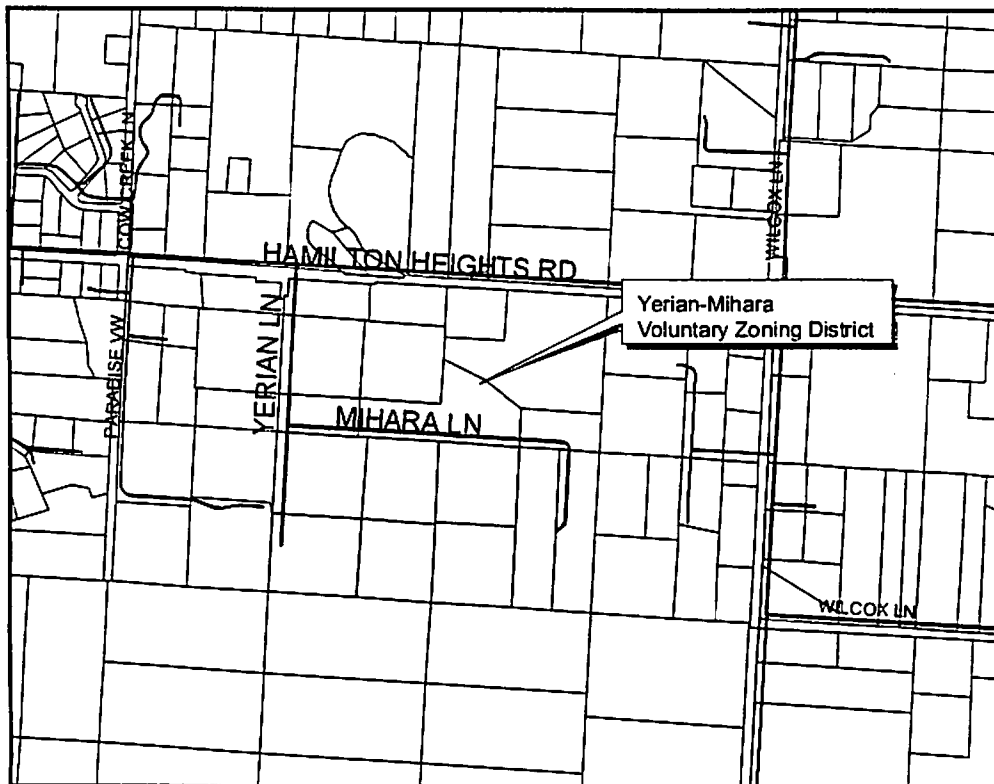
PZC Public Hearing:  
BCC Public Meeting:

February 22, 2007  
TBD

**DISTRICT  
REPRESENTATIVE:**

John Horwich  
201 Whitaker #10  
Missoula, MT 59803

**LOCATION OF REQUEST:** The proposed voluntary zoning district is located southeast of Corvallis off Hamilton Heights Road. *(See Map 1)*



**Map 1: Location Map**  
(Source Data: Ravalli County Planning Department)

**LEGAL DESCRIPTION  
OF PROPERTY:**

The Yerian-Mihara Voluntary Zoning District consists of AP 516269, Lots 1-A and 2-A; AP 808, Lots 3-A and 4-A; W ½ Lot 5; AP 574, part Lot 5-B; AP 642, Lots 6-A and 7-A all in Block 4 and AP 574, part Lot 5-B and all of Lot 6-A; AP 1006, Lots 9-A and 10-A; and Lots 11 and 12 in Block 5 of Hamilton Heights Subdivision, in Section 15, Township 6N, Range 20W, P.M.M., Ravalli County, Montana.

**LEGAL NOTIFICATION:**

A legal advertisement was published in the Ravalli Republic on Tuesday, February 6, 2007. A corrected legal advertisement with a full map was published in the Ravalli Republic on Thursday, February 8, 2007. Notice of the project was posted on the property in three different locations on February 7, 2006. Requests for public comment were sent to property owners by first class mail within the district on January 31, 2007. Three public comments have been received and are attached as Exhibits 1, 2, and 3.

**DEVELOPMENT  
PATTERN:**

|                  |                         |
|------------------|-------------------------|
| Subject property | Low-density residential |
| North            | Low-density residential |
| South            | Agricultural            |
| East             | Low-density residential |
| West             | Low-density residential |

# RAVALLI COUNTY PLANNING & ZONING COMMISSION

FEBRUARY 22, 2007

## YERIAN-MIHARA VOLUNTARY ZONING DISTRICT STANDARDS

### RECOMMENDED MOTION

(Staff changes to the proposed district standards are in underline/~~strikeout~~.)

That the Planning and Zoning Commission make the following findings:

1. The Yerian-Mihara Voluntary Zoning District standards reduce the potential impacts of development on public health and safety;
2. The proposed district standards, as amended, will help maintain a consistent development pattern within the Yerian-Mihara Voluntary Zoning District and the surrounding area that is beneficial to the current physical and economic development of the area;
3. The district standards substantially comply with relevant provisions of the Growth Policy; and
4. The district standards will have minimal effects on agricultural activities.

Based on those findings and the findings in the staff report, the Planning and Zoning Commission hereby adopts a resolution to recommend the Board of County Commissioners adopt the Yerian-Mihara Zoning District Standards as amended by staff.

### INTRODUCTION

Yerian-Mihara is a proposed Voluntary Zoning District located approximately 2.5 miles southeast of Corvallis. The district is comprised of 13 parcels, each of which average approximately 9.2 acres in size. The district is located in a mostly low-density residential area. Cow Creek, an intermittent stream, traverses the district in a northwest to southeast direction. Bordering portions of the creek are potential wetlands, as identified by the National Wetlands Inventory.

The district was originally proposed on August 9, 2006. The Commissioners considered the request and created the district boundaries via Resolution #1972 on September 5, 2006. The original proposal included a set of proposed zoning district regulations, which have been evaluated by staff against the review criteria outlined in state law. Staff has also evaluated the proposed district standards and recommended changes to improve clarity and prevent issues associated with enforcement of the regulations.

*Staff recommends approval of the district standards as amended.*

## **ZONING DISTRICT REPORT**

### **COMPLIANCE WITH ZONING DISTRICT STANDARDS REVIEW CRITERIA**

#### **CRITERION 1: EFFECTS ON PUBLIC HEALTH AND SAFETY**

##### **Findings of Fact:**

1. The Yerian-Mihara Voluntary Zoning District is located approximately 2.5 miles southeast of the town of Corvallis.
2. Cow Creek, an intermittent stream, traverses the district in a northwest to southeast direction.
3. Portions of the district may contain wetlands, as identified by the National Wetlands Inventory.
4. Development Pattern item #1 prevents future subdivision of all parcels within the district, excepting the construction of a guest home.
5. The restriction of future subdivision, excepting the construction of a guest home or cottage, within a potential wetlands area reduces the potential adverse impacts of development on public health and safety.
6. Any addition of a guest home will be subject to the requirements and design standards as outlined in the Ravalli County Subdivision Regulations. Meeting these requirements will further help mitigate any adverse effects that may occur in relation to public health and safety.

##### **Conclusion of Law:**

The proposed district standards reduce the potential impacts of development on public health and safety.

#### **CRITERION 2: ESTABLISH A DEVELOPMENTAL PATTERN FOR THE PHYSICAL AND ECONOMIC DEVELOPMENT OF THE DISTRICT**

##### **Findings of Fact:**

1. The proposed zoning district is located within an area where the predominant use is low-density residential. Properties within the district average approximately 9.2 acres. The surrounding properties range from 5 to 20 acres in size.
2. The proposed district standards promote an overall development pattern consistent with current uses and the land development pattern within the district and the surrounding area.
3. Development Pattern item #3 limits any commercial use to home-based occupations. To ensure that home-based occupations have minimal impact on the existing development pattern of the area and to prevent any potential confusion about what constitutes a home-based occupation, staff recommends adding a section to clarify what is meant by the term "home-based occupation."
4. The district standards lay out a list of conditions which must be complied with in order to operate a home-based occupation. The conditions set forth do not hinder the potential for the economic development of a home-based occupation.
5. Development Pattern item #4 requires residences, structures, and buildings to be setback 25 feet from property lines.

##### **Conclusion of Law:**

The proposed district standards, as amended, will help maintain a consistent development pattern within the Yerian-Mihara Voluntary Zoning District and the surrounding area that is beneficial to the current physical and economic development of the area.

#### **CRITERION 3: COMPLIANCE WITH THE GROWTH POLICY**

##### **Findings of Fact:**

1. The Ravalli County Growth Policy provides that creation of voluntary zoning districts is a mechanism that can be used to implement the goals and objectives of the Growth Policy. MCA 76-2-101 et. seq., provides for the creation of a voluntary zoning district.

2. Voluntary zoning districts are citizen-initiated through a petition process to the Board of County Commissioners.
3. Relevant provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the voluntary zoning district standards against these provisions.

**Countywide Goal 1B:** Promote private open land, farm land, ranch land, and recognition of agriculture and forestry as valued land resources.

- The proposed district standards specifically permit agricultural activities.

**Countywide Goal 2:** Protect water quality and supply.

- The proposed district will protect Cow Creek, an intermittent stream, by limiting future subdivision of land.
- Adoption of the regulations will limit the amount of new wastewater treatment systems and wells introduced into the district that could adversely affect ground and surface water resources.

**Countywide Goal 3:** Protect air quality.

**Countywide Goal 7:** Plan for residential and commercial development.

- Adopting district standards helps to plan for appropriate residential and commercial development in appropriate areas. The location of the Yerian-Mihara Voluntary Zoning District is suitable for low-density residential development and home-based occupations, due to its relative distance from services.

**Conclusion of Law:**

The proposed district standards substantially comply with relevant provisions of the Growth Policy.

**CRITERION 4: EFFECTS ON AGRICULTURAL ACTIVITIES**

**Findings of Fact:**

1. State law provides that voluntary zoning districts shall not regulate lands used for grazing, horticulture, agriculture, or the growing of timber. There are currently no known agricultural/forestry activities taking place within the district boundaries.
2. The proposed district standards specifically allow agricultural activities.

**Conclusion of Law:**

The proposed district standards minimize effects on agricultural activities.

**YERIAN-MIHARA  
VOLUNTARY ZONING DISTRICT  
E X H I B I T "A"**

The undersigned owners of property within the proposed district, hereby petition the County Commissioners of Ravalli County, Montana to establish the Yerian-Mihara Voluntary Zoning District, pursuant to the following terms and conditions:

Property Within the District. The following properties shall be within the Yerian-Mihara Voluntary Zoning District:

Township 6 North, Range 20 West, Section 15, Hamilton Heights:  
Block 4, Lots 1-A, 2-A, 3-A, and 4-A, 5, 5-B, 6-A and 7A  
Block 5, Lots 5-B, 6-A, 9-A, 10-A, 11 and 12

Area Within the District. The area within the District is approximately ~~110.32~~ 119.81 acres.

Development Pattern. The following development pattern provisions are proposed for the Yerian-Mihara Voluntary Zoning District:

1. ~~The minimum lot size shall be determined by lot sizes existing on January 1, 2006. No lot shall be further divided or subdivided after January 1, 2006. Minimum lot size in the district shall be 9 acres. Existing non-conforming lot sizes are permitted, however, no further subdivision of lots shall be allowed, except as provided for guest homes below. (Staff explanation: This clarifies that you cannot subdivide to create new lots as of the adoption of these regulations, but you can do a subdivision for lease or rent (no lots created) to allow for one guest home on each parcel.)~~
2. All lots are restricted to residential and agricultural use only, except as otherwise provided in paragraph 3 below.
3. No more than one single-family dwelling shall be permitted on any lot, provided that this restriction shall not prohibit (a) ~~reasonable accommodations for the temporary housing of guests and family not to exceed 6 months in any 12 month period, whether or not such accommodations are part of or separate from the main residential dwelling, construction of a guest home or~~ (b) the conduct of a home occupation as long as the office or facilities for such are contained entirely within the main residential dwelling and as long as the main residential dwelling is used as a dwelling. Nothing in this paragraph shall exempt from county subdivision review any activity that would otherwise be subject to such review. Construction of guest homes or cottages shall be reviewed in accordance with the Ravalli County Subdivision Regulations. (Staff explanation: It is difficult to enforce temporary housing situations; therefore, staff is recommending that if guest homes are to be allowed that this is clear and if the neighbors want to enforce how long they have been occupied this should be done through the covenants.)
4. All residences, structures, and buildings shall be setback from property lines at least 25 feet.

Home Occupation means any occupation, professional, enterprise, or similar activity that is conducted on the premises of a residence as an accessory use and that would be compatible in size and scope in a residential setting; the term does not include hobbies or similar non-commercial activities or any activity that would meet the definition of heavy industry.

Home occupations must conform to each of the following conditions:

1. They shall be carried on by a member of the resident(s) of the dwelling unit.
2. There may be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of the home occupation other than one exterior sign, no larger than six (6) square feet in size, which shall not be mounted on a pole or in the air, and must be placed on the home within four (4) feet of the main entry door.
3. There shall be no exterior storage of materials or variation from the residential character

- of the principal building.
4. No traffic may be generated by a home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of the home occupation shall be met off the street. No home occupation, or any required parking for the home occupation, shall use the parking space required for the residence.
  5. No vehicles, except those normally used as passenger vehicles, will be used for the home occupation unless stored or parked elsewhere.
  6. No offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced.

*(Staff explanation: Home occupations can be difficult to enforce. Staff is recommending further clarification as to what is meant by the term "home occupation." There are many different possible ways to define what is meant by a home occupation. Please let staff know if you wish to consider alternative definitions and descriptions.)*

Nonconforming Uses and Structures. To avoid undue hardship, nothing in these regulations shall be deemed to require a change in the plans or construction of any building on which actual construction was lawfully begun prior to the effective date of these regulations. A lawful use ~~of land or structure~~ existing within the zoning district on the effective date of these regulations, made no longer permissible by these regulations, may be continued so long as it remains otherwise lawful. If a nonconforming use or structure ceases to exist for any reason for a period of more than one year, any subsequent structure or use of the land shall conform to these regulations. *(Staff explanation: A nonconforming section could be fairly lengthy. It seems most likely that we might need to address what would happen if a nonconforming situation was to be destroyed for any reason.)*

## Variances.

### Procedures for Variance Requests

1. Applications for a variance to the Board of County Commissioners may be submitted by any person by filing an Application for Variance with the Ravalli County Planning Department. Application forms shall be available at the Ravalli County Planning Department. Fees shall be required to be paid by the applicant in the amounts established in a fee schedule adopted by the Ravalli County Commissioners.
2. The Application for Variance must identify the applicant, identify the property at issue, identify the owner of the property and explain the relationship between the applicant and owner (if different), describe the factual background and particulars of the variance requested, set forth the specific reasons for requesting the variance, and explain how the applicant believes the variance criteria set forth herein are satisfied. Applications for variances shall be reviewed by staff for completeness, and shall be returned to the applicant without further processing if determined not to meet the requirements of this section.
3. The Ravalli County Planning Department shall fix a reasonable time for the Board of County Commissioners hearing of the variance request.
4. The Ravalli County Planning Department shall publish two(2) notices, one (1) week apart in a newspaper of general County circulation, the first of which shall appear at least fifteen (15) days prior to the public hearing. The notice shall contain a brief description of the variance request; the location of the property; the date, time and place of the public hearing; and the statement that the application is on file for public inspection at the Planning Department.

5. The Ravalli County Planning Department shall send written notification of the variance request to the property owners according to the following procedures:
  - a. Mailing lists shall include all persons listed in the most current available data in County Records who own the subject property(s) and property in the Yerian-Mihara Voluntary Zoning District.
  - b. The mailing shall be made at least fifteen (15) days prior to the public hearing.
  - c. The notice shall contain a brief description of the nature of the application; the time, place and date of the public hearing; and the phone number and address of the Planning Department.
6. At the hearing any party may appear in person or be represented by an agent or attorney.

Requirements for Granting a Variance

1. To grant a variance the Board of County Commissioners must make findings that:
  - a. granting the variance will not be contrary to the public interest or injurious to the neighborhood; and
  - b. owing to special conditions, a literal enforcement of the provisions of these regulations will result in unnecessary hardship if the variance is not granted; and
  - c. the spirit of the regulations shall be observed and substantial justice done; and
  - d. the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure; and
  - e. the special conditions and circumstances do not result from the action of the applicant or prior owners of the parcel at issue.
2. Neither the permitted nor nonconforming use of other lands, structures or buildings in the jurisdiction is grounds for the issuance of a variance.
3. "Hardship" refers to circumstances peculiar to the particular property. Financial or economic difficulties or consequences of actions by the property owner are not "hardships" for variance purposes.

Severability. The provisions of these regulations are severable. If any provision or portion thereof is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining provisions, all of which shall remain in full force and effect.



# Exhibit 1

## WORDEN THANE P.C.

ATTORNEYS AT LAW

111 N. HIGGINS, SUITE 600  
P.O. BOX 4747  
MISSOULA, MONTANA 59806-4747  
TELEPHONE (406) 721-3400  
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www.wthlaw.net  
wthlaw@wthlaw.net

DONOVAN WORDEN, SR., 1892-1967  
DONOVAN WORDEN, JR., 1911-2001

MOLLY K. SHEPHERD, OF COUNSEL

RECEIVED  
NOV 24 2006  
JC-06-11-1818  
Ravalli County Planning Dept  
JEREMY G. THANE  
RONALD A. BENDER  
PATRICK G. FRANK  
MARTIN S. KING  
PATRICK DOUGHERTY  
W. CARL MENDENHALL  
GAIL M. HAVILAND  
SHANE A. VANNATTA  
PETER S. DAYTON  
SEAN M. MORRIS  
REID J. PERKINS  
WILLIAM E. MCCARTHY  
MATTHEW J. CUFFE  
JANE E. COWLEY  
MICHAEL M. LAWLOR  
COLLEEN M. DOWDALL

November 22, 2006

Ravalli County Commissioners  
215 S. 4th Street, Suite A  
Hamilton, MT 59840

Re: Yerian-Mihara Voluntary Zoning District  
Our File No. 11645-001

Dear Commissioners:

I am writing to you regarding the passage of the Yerian-Mihara Voluntary Zoning District, Resolution No. 1972, Ravalli County. I represent Lyn James, a property owner within the newly created Voluntary Zoning District. This district was created in September, 2006 and to my knowledge, a hearing has not been set before the Planning and Zoning Commission to consider adoption of a development pattern for the district. I have however reviewed the development pattern proposed for the district and on behalf of my client, I have significant legal challenges to the appropriateness of what has been proposed by some of the other landowners.

In addition, as you are aware, after the creation of the Voluntary Zoning District, the voters of Ravalli County zoned the entire jurisdiction of Ravalli County by initiative, at a density of one dwelling unit per two acres, effective immediately. If you also adopt a development pattern in this district, my client will be subject to two types of zoning - the County density requirement and the requirements of the Voluntary Zoning District.

I am proposing that the Commission take action to void creation of the Voluntary Zoning District. The advantage to my client in doing this is that she will be on the same playing field as others in the County. The advantages to Ravalli County are many. Neither the planning office, the commissioners office, or my client will have to put time and energy into the analysis of the

Ravalli County Commissioners  
November 22, 2006  
Page 2

proposed pattern of development, prepare staff reports and, conduct and attend the required public hearings. It is in keeping with the expressed wishes of the voters of Ravalli County that every owner of land be given the right to subdivide at a density of one dwelling unit per two acres.

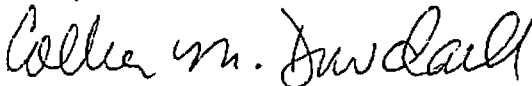
While there is no statutory requirement that a development pattern be adopted within a defined time period after creation of the district, the Planning and Zoning Commission is charged with the "duty to make and adopt a development pattern for the physical and economic development" of the district. It does not seem to be an option to keep the district in existence but not adopt a development pattern.

It is noteworthy that while Ravalli County is establishing all of the structure necessary to implement and enforce county zoning, the Voluntary Zoning District will be required to use a separate structure. County zoned property owners will seek variances from the Board of Adjustment. Those in a Voluntary Zoning District will appear before the Board of County Commissioners to request variances. County zoning amendments are first heard by the planning board and must be in compliance with the growth policy. Amendments to the Voluntary Zoning District standards are heard by the Planning and Zoning Commission (made up of the three commissioners and others) and by the County Commissioners. There is no requirement that the standards in a Voluntary Zoning District comply with the growth policy.

Please let me know if you intend to hear the proposed development pattern for the Yerian-Mihara Voluntary Zoning District. In the alternative, if it would be helpful, my client will prepare a formal request to dissolve the Voluntary Zoning District.

Please let me know if it would be helpful for us to meet to discuss these issue. Thank you for your consideration.

Sincerely,



Colleen M. Dowdall

cc: George Corn, Ravalli County Attorney  
Karen Hughes, Planning Director  
Lyn James

## Exhibit 2

Phone conversation between Jennifer De Groot and James Shatney  
10:15 a.m. on Friday, February 09, 2007

Re: Yerian-Mihara Voluntary Zoning District

Mr. Shatney said he belongs to a set of covenants that includes neighbors within the VZD and across Yerian Lane, who are not in the VZD. He said that he does not want to be included in the district and does not like the proposed standards. He said that all the people in his set of covenants should be included in the district, not just those hand-picked. He asked to be removed from the district and noted he did not know about the protest period when the district boundary was created. He stated that he specifically did not like proposed Development Pattern 3, which limits the temporary housing of guests. He suggested that the people who proposed this should have had a neighborhood meeting to discuss it first.

## Exhibit 3

Phone conversation between Jennifer De Groot and John Neville  
10:45 a.m. on Friday, February 09, 2007

Re: Yerian-Mihara Voluntary Zoning District

Mr. Neville said he is unhappy with the district and there was no communication when the boundary was created. He commented that the people across Yerian Lane were not included in the district, but should have been since they are under the same set of covenants. He strongly suggested removing Development Pattern 3, which limits the temporary housing of guests. He noted that he was planning on coming to the Planning and Zoning Commission Meeting.

02-21-07

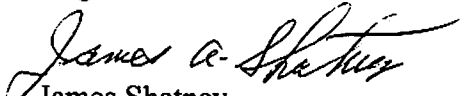
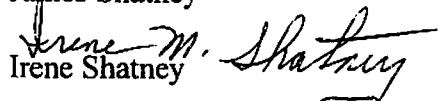
The so called voluntary zoning area is composed of 3 covenant groups. 2 of which are all within the proposed zoning area. The other group, has 11 members of which only 3 are in this zoning area. 2 of these do not want to be. Their land would be controlled by the County zoning, Voluntary zoning, and the covenants of a group outside the voluntary zoning area. This would be over kill and make it very difficult to ever sell therefore decreasing the property value.

There are inconsistencies in one of the groups that had covenants when they bought their property that governed subdividing. They have subsequently removed these covenants and at least part of them now want zoning and restricted subdividing.. Why is this?

There are inconsistencies in the zoning area boundaries. One members land consist of approximately 15 acres. Yet only 10 is contained in the zoning area. Why is this? Another property owner was left out completely, yet the land borders Yerian lane the same as their neighbors that are included in the Voluntary zoning area. Why is this?

To date, in my opinion, the handling of this project has caused our formally very friendly neighborhood to become one of very little trust, and neighbors no longer talking to neighbors. If this is a voluntary zoning let it be that. At this time it is not! I do not want to be part of it

At this time things can still be, amended, canceled or least discussed to rebuild our neighborhood.

  
James Shatney  
  
Irene Shatney

- **No neighborhood meetings were held to discuss changes or allow input from those to be affected. When asked to sign onto the proposal I was told that it didn't matter what I thought since enough others had already signed on .**
- **Why aren't property owners on both sides of Yerian Road included? Only those on the east side of the road are included. It appears that some property owners were purposely left out in order to minimize the number of dissenting owners thereby making it easier to assure enough approving owners get the required percentage.**
- **Several property owners that did sign the petition have never lived on their property and apparently have no intention of living on it. As a matter of fact, the person that drew up this proposal sold his property and move out of state immediately after presenting it to the county .**
- **Nobody is going to tell me how long I can have house guests in my home.. This is not Russia , China or any other country that thinks they can dictate what their citizens can and can not do with their private property . Its called CIVIL RIGHTS! And that's why we have groups like the ACLU.**

## Jennifer Degroot

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**From:** Karen Hughes  
**Sent:** Wednesday, February 21, 2007 2:22 PM  
**To:** Colleen M. Dowdall  
**Cc:** Alex Beal; Jennifer Degroot  
**Subject:** RE: Yerian-Mihara Staff Report

Colleen,

Thanks for the clarification. We will make sure it is forwarded to the Planning and Zoning Commission. Yes, Alex is the new civil attorney. (yea!!!)

Karen

*Karen Hughes, AICP  
Ravalli County Planning Department  
215 S. 4th Street Ste F  
Hamilton, MT 59840  
Phone (406) 375-6530  
Fax (406) 375-6531  
khughes@ravallicounty.mt.gov*

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**From:** Colleen M. Dowdall [mailto:cdowdall@wthlaw.net]  
**Sent:** Wednesday, February 21, 2007 2:17 PM  
**To:** Karen Hughes  
**Cc:** Alex Beal; Jennifer Degroot  
**Subject:** RE: Yerian-Mihara Staff Report

Karen, I was not complaining about the notice. I know that your copy to me was not required and I appreciate it. My client is very comfortable making these arguments herself. I also know that the only required notice is the posting in the district. My client had received hers but it did not occur to her that staff would recommend something different than was requested.

My argument on the layers of regulation is that this area of land is currently subject to county zoning (1 unit per two acres) and the jurisdiction over that zoning is the Commissioners, variances are granted by the BOA and Part 2 of Title 76 of the MCA's governs that zoning.

The area will also be subject to this new district (minimum lot size of 9 acres) with various development guidelines and the jurisdiction over that zoning is the Planning and Zoning Commission where variances are granted by the BCC and Part 1 of Title 76 governs.

Because the interim zoning is so limited in applicability, especially given the opinions regarding the prohibition of rezonings and the unavailability of the BOA, it is not a huge problem.

However, if permanent zoning is adopted, and its standards are something like the Part 1 zoning, this area will be zoned twice under two different jurisdictions. If someone wants a variance they will need to go to both the BOA and the commissioners. A rezoning would require two separate tracks as well.

You need to either skip this area when you do countywide zoning or somehow, abandon this district when countywide zoning is applied here. I never could find a way to make Part 2 zoning automatically replace Part 1 zoning or act as a rezoning of Part 1 zoning. (This is something that Myra and I actually agreed upon.) I also agree that the petition to create the district had to be heard but the Planning and Zoning commission does not have to adopt the development pattern and I thought it might be time better spent doing the county zoning. So

2/21/2007

those are the layers I fret about.

Alex, are you the new civil attorney?

Colleen

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**From:** Karen Hughes [mailto:khughes@ravallicounty.mt.gov]  
**Sent:** Wednesday, February 21, 2007 11:38 AM  
**To:** Colleen M. Dowdall  
**Cc:** Alex Beal; Jennifer Degroot  
**Subject:** RE: Yerian-Mihara Staff Report

Colleen:

I just checked and in addition to publishing the legal ad and posting signs on the property, on January 31<sup>st</sup> we sent out a mailing to all property owners within the district notifying them of the public hearing. I'm sorry that we didn't get that notice sent to you as well, but it was sent to Lyn James. We have also provided a copy of the staff report that includes your letter to Alex Beal at the County Attorney's Office. In regards to the idea of layers of zoning, I know the County Attorney's Office has indicated that as long as the petition meets the minimum requirements that they should be processed accordingly. (see attached opinion) In this case, because the proposed zoning standards for density are more restrictive than the interim zoning, I am not sure I understand what the issue is. Any clarification you can provide is appreciated.

Regarding Sapphire Country Estates, I have not heard anything.

Karen

*Karen Hughes, AICP  
Ravalli County Planning Department  
215 S. 4th Street Ste F  
Hamilton, MT 59840  
Phone (406) 375-6530  
Fax (406) 375-6531  
khughes@ravallicounty.mt.gov*

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**From:** Colleen M. Dowdall [mailto:cdowdall@wthlaw.net]  
**Sent:** Wednesday, February 21, 2007 11:24 AM  
**To:** Karen Hughes  
**Subject:** RE: Yerian-Mihara Staff Report

Karen,  
I needed a little more notice (I still teach at noon on Thursdays) so my client is going to represent herself and she is very comfortable with me not being there. She is feeling quite hopeless to get anything changed. I read to her some of the changes staff is recommending which make the regulations more clear legally (the minimum lot size as opposed to no new subdivisions) and encouraged her to make arguments from my letter about having two layers of zoning on property – the county zoning (initiated by citizens and the citizen initiated.)

Any word on my other deal with the Sapphire Country? Please? Please? Please?

Colleen

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**From:** Karen Hughes [mailto:khughes@ravallicounty.mt.gov]

2/21/2007



**Sent:** Wednesday, February 21, 2007 8:06 AM  
**To:** Colleen M. Dowdall  
**Cc:** Jennifer Degroot  
**Subject:** FW: Yerian-Mihara Staff Report

Colleen: I forgot to have Jen send you a courtesy copy of our staff report regarding the Yerian-Mihara VZD that will be considered during tomorrow's meeting. Karen

*Karen Hughes, AICP  
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215 S. 4th Street Ste F  
Hamilton, MT 59840  
Phone (406) 375-6530  
Fax (406) 375-6531  
khughes@ravalliacounty.mt.gov*

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**From:** Jennifer Degroot  
**Sent:** Friday, February 16, 2007 10:15 AM  
**To:** 'John Horwich'  
**Cc:** Karen Hughes  
**Subject:** Yerian-Mihara Staff Report

Dr. Horwich,

Attached is the Yerian-Mihara Voluntary Zoning District agenda and staff report. I will be sending a hardcopy in the mail to your Missoula address. Please let me know if you have any questions/concerns.

Thank you,

Jennifer De Groot, Projects Planner  
Ravalli County Planning Department  
215 S. 4th St., Suite F  
Hamilton, MT 59840  
Phone (406) 375-6530  
Fax (406) 375-6531